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CASES.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

THOMAS J. STOCKLEY ET AL., APPELLANTS,
v.
THE UNITED STATES OF AMERICA.
No. 74.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR THE UNITED STATES.

STATEMENT OF CASE.

Stockley settled on the land in question on March 10, 1897, and made a formal homestead entry on November 13, 1905 (180). He resided on the land continuously from the time of settlement until about three months before the submission of final proof on January 5, 1909, his wife's health making it necessary that he move to Mooringsport (93, 109). He cultivated twelve acres each year and built a two-room house worth $100 (109). On December 15, 1908, certain lands in Louisiana, of which the tract in controversy forms a part, were withdrawn from settlement, entry, or other form of appropriation, but existing valid claims were not affected (48). On that day the Commissioner of the General Land Office so

notified the local register and receiver. The instructions, which should be carefully read, will be found at page 51.

After giving all legal notices, Stockley submitted final proof on January 5, 1909 (180, 54–57). On January 16, 1909, he submitted a nonmineral affidavit (180, 52). On that date a receipt was issued to him (57). As printed in the record, it purports to be signed by the *register* (57). Another part of the record, however, shows that it is signed by the *receiver* (47).

In the meantime the act of June 25, 1910, 36 Stat. 847, had been passed. On July 2, 1910, under the provisions of that act, the previous order of December 15, 1908, was ratified and continued in full force and effect (59). The register and receiver at the time of the withdrawal order of December 15, 1908, were instructed to proceed "up to and including the submission of final proofs," but were enjoined not to "receive the purchase price or issue final certificates of entry," and were told to "suspend the entries and proofs pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects." Accordingly nothing further was done until February 10, 1912, at which time a special agent of the Land Office submitted an adverse report (61). The Commissioner of the General Land Office thereupon, under date of February 27, 1912, directed the local register and receiver to proceed in accordance with the circular of January

19, 1911, and in doing so to state that the special agent charges that (*a*) the land is mineral, and (*b*) that the claimant, at the time of making final proof, knew it was chiefly valuable for oil and gas (61).

The matter accordingly came on for hearing on December 28, 1912 (64). Both the Government and claimant introduced evidence (65–100), which will be referred to later. The evidence was closed December 30, 1912 (96). The register and receiver, on March 1, 1913, rendered their decision in favor of Stockley. They said that the proof disclosed that he had settled on the land before oil or gas was known in that section of the country; that his proof was made nearly five years after his entry; that this was before oil or gas had been discovered closer than five miles away; that a dry well existed between his land and these producing wells; and that the discovery of oil on his land long after final proof should not defeat his entry (107). On December 22, 1913, the Commissioner of the General Land Office, on a careful review of the whole evidence, reversed this decision and directed a cancellation of the entry (108). An appeal was thereupon taken to the Secretary of the Interior, who, on July 9, 1915, affirmed the decision of the Commissioner of the General Land Office, but with a modification which permitted the entryman to obtain a patent to the surface under the act of July 17, 1914, 38 Stat. 509 (119). A rehearing was apparently asked for on the ground that under date of July 16, 1910, the register and the receiver were informed by the Commissioner of the

General Land Office that the withdrawal order of December 15, 1908, had been vacated (62). But the rehearing was denied, the Secretary ruling that with respect to the land in question the withdrawal order had never been revoked (118). Stockley declined a surface patent, and his entry was thereupon formally revoked on January 21, 1916 (123).

The United States brought this suit on August 2, 1917, against Stockley and others to obtain a decree quieting title and to recover the value of the oil taken from the land under a lease (101) executed on March 17, 1910, by Stockley in favor of the Gulf Refining Company, one of the defendants, for which $5,700 was paid (95). In the event that oil or gas in paying quantities was found, he was to receive a one-eighth royalty if the production did not exceed 200 barrels a day, and one-sixth if the production was in excess of that (103). The defendants plead in bar (16) that Stockley made formal proof on January 5, 1909; that a receiver's receipt on final entry was issued on January 16, 1909; that no contest or protest against the validity of this entry was initiated within two years; and that at the end of the two-year period Stockley, under the act of March 3, 1891, became the absolute owner and entitled to a patent. They further plead that on the hearing instituted by the Commissioner of the General Land Office to determine the character of the land, no evidence was introduced tending to show its mineral character; that the decision of the register and receiver in Stockley's favor was, under the rules, final; that the review and

reversal of that decision by the Commissioner of the General Land Office was arbitrary and unwarranted; and that the affirmance by the Secretary of the Interior of the latter's decision was likewise null and void. The plea in bar was overruled in a written opinion filed by the district judge on November 7, 1918 (39). The case was thereupon referred to a special master (41), who, after hearing all the testimony, recommended, on April 7, 1919, that a decree as prayed for be entered (139). Exceptions (152) to his report were overruled on July 17, 1919 (161). A decree in favor of the United States was rendered on August 4, 1919, and filed on August 12, 1919 (164). An appeal to the Circuit Court of Appeals was taken on September 23, 1919 (169). On March 24, 1921, that court affirmed the decree (186). An appeal to this court was taken on April 4, 1921 (200). The record was filed here on April 27, 1921.

The main propositions upon which we rely are four in number:

1. The receipt issued in this case was not a receiver's receipt upon final entry within the meaning of the proviso in §7 of the act of March 3, 1891, 26 Stat. 1098.

2. The decision of the register and receiver in favor of Stockley was reviewable by the Commissioner of the General Land Office even though no formal appeal was taken.

3. The Commissioner of the General Land Office had before him evidence upon which to base a finding

that the tract was known mineral land at the time Stockley submitted his final proof.

4. Independently of the nature of the testimony before the local land officers, the finding of the Land Department as to the character of the land is conclusive and unassailable.

The receipt issued in this case was not a receiver's receipt upon final entry within the meaning of the proviso in §7 of the act of March 3, 1891, 26 Stat. 1098.

This proviso has been under consideration in two cases:

Lane v. *Hoglund*, 244 U. S. 174.
Payne v. *Newton*, 255 U. S. 438.

But neither of these cases dealt with the question which is presented here as to the meaning of the words "receiver's receipt upon the final entry." The appellants, as we have seen, contend that the receipt which was issued to Stockley at the time he submitted his final proof, was the kind of a receipt which this proviso contemplates. The Government emphatically asserts the contrary.

At the outset it is important to note the instructions and limitations imposed by the General Land Office on the register and receiver in connection with the entry in question. Under date of December 15, 1908, they were told by the Commissioner (51):

> Applications, selections, entries, and proofs based upon selections, settlements, or rights initiated prior to the date of withdrawal may be received by you and allowed to proceed under the rules up to and including the submission of final proofs. You must not, however, in

> such cases receive the *purchase money or issue final certificates of entry*, but must *suspend the entries and proofs* pending investigation as to the validity of the claims with regard to the character of the land and compliance with the law in other respects.

This of course was a direction *not to pass upon the final proofs.*

THE PROVISO IN §7 CAN NEVER BECOME OPERATIVE AND THE TWO-YEAR PERIOD DOES NOT BEGIN TO RUN UNTIL AFTER THE REGISTER AND RECEIVER IN FACT PASS UPON THE FINAL PROOFS AND ISSUE A RECEIVER'S RECEIPT IF THE PROOF IS FOUND REGULAR IN ALL RESPECTS.

Obviously, the first inquiry is to ascertain the commonly accepted meaning of the words "receiver's receipt" when Congress passed the act of March 3, 1891, and the prevailing practice of the Land Office at that time in the issuance of patents. The duties of the register and receiver are prescribed by statute and regulations, and call for the exercise of judgment. By circular of October 21, 1878, they were instructed:

> You will carefully examine homestead proof in each case, and if you find it correct in all respects, as required by law and instructions, you will write "approved" on the same and subscribe your names underneath. If anything be wanting to perfect the proof, call for supplemental affidavits and have the want supplied before transmitting the same to this office.[1]

[1] Copp's Public Land Laws, 1450 (1882).

The Commissioner of the General Land Office in calling the attention of the register and receiver to this instruction said, under date of September 17, 1883 (2 L. D. 199):

> You will be careful to give the testimony and affidavit in each case critical examination * * *. You must assume the initial responsibility of deciding whether the requirements of law and official instructions have been fully met.

This court has recognized that they must exercise judgment and discretion, for in *Parsons* v. *Venzke*, 164 U. S. 89, 92, it is said: "Whenever the local land officers *approve the evidences of settlement and improvement* and receive the cash price they issue a receiver's receipt."

Curiously enough, the homestead laws make no specific provisions for the issuance of a receiver's receipt, nor do they define its effect. Section 2291 of the Revised Statutes, as amended by the act of June 6, 1912, ch. 153, 37 Stat. 123, provides:

> No *certificate*, however, shall be given or patent issued therefor until the expiration of three years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry * * * proves by himself and by two credible witnesses, * * *, then in such case he * * * shall be entitled to a patent, as in other cases provided by law.

Section 2238 of the Revised Statutes, which deals with the fees and commissions allowed registers and receivers, provides in part:

> Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely: * * * Second. A commission of one per centum on all moneys received at each receiver's office. Third. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the *certificate therefor issued as the basis of a patent.*

This language points to the fact that the certificate (and not the receiver's receipt) is the basis upon which patent issues. And this at once suggests that when Congress used the words "receiver's receipt upon the final entry," as it did in the proviso in §7 of the act of March 3, 1891, it did so upon the supposition that a receiver's receipt was a receipt for the purchase price which was issued *simultaneously with the certificate of entry.* This, it would seem, was the prevailing practice. A general circular issued by the Commissioner of the General Land Office on October 1, 1880,[1] says, in dealing with the homestead laws:

> An inceptive right is vested in the settler by such proceedings, and upon faithful observance of the law in regard to settlement and cultivation for the continuous term of

[1] Copp's Land Laws, 247 (1882).

> five years, and at the expiration of that time, or within two years thereafter, upon proper proof to the satisfaction of the land officers (Forms 4–070, 4–369, and 4–370), and payment to the receiver of that part of the commissions remaining to be paid, as given in tables on page 24, the Receiver issuing his *receipt* therefor, the Register will issue his *certificate* (Forms 4–140 and 4–196) and make proper returns to this office as the basis of a patent or complete title for the homestead (p. 255).

Again:

> In any case where the final proof shall be transmitted to the register and receiver, as contemplated in this act, and the full amount of money due shall be paid, they will carefully examine the proof, and, if no objection appears, proceed to issue the *receipt and certificate* in the case, and make proper returns to this office as the basis of a patent or complete title for the homestead, pursuant to existing laws (p. 257).

Forms of a receiver's final receipt (4–140) and of a final certificate (4–196) will be found accompanying the circular just mentioned. Copp's Land Laws, 292 (1882).

THE COURTS NOT INFREQUENTLY USE THE TERMS "RECEIVER'S RECEIPT" AND "CERTIFICATE OF ENTRY" AS THE EQUIVALENT OF EACH OTHER.

Receiver's receipt.—In *Parsons* v. *Venzke*, 164 U. S. 89, 92, the court says:

> An entry is a contract. Whenever the local land officers approve the evidences of settle-

ment and improvement and receive the cash price they issue a receiver's receipt. Thereby a contract is entered into between the United States and the preemptor, and that contract is known as an entry.

In *United States* v. *Detroit Lumber Co.*, 200 U. S. 321, 337, the court says:

> It becomes necessary to inquire what is the significance of a final receiver's receipt and the effect of a cancellation by the Land Department of such a receipt. The receipt is an acknowledgment by the Government that it has received full pay for the land, that it holds the legal title in trust for the entryman, and will in due course issue to him a patent. He is the equitable owner of the land.

Certificate of entry.—In *Witherspoon* v. *Duncan*, 4 Wall. 210, 218, the court says:

> According to the well-known mode of proceeding at the land offices (established for the mutual convenience of buyer and seller), if the party is entitled by law to enter the land, the receiver gives him a certificate of entry reciting the facts, by means of which, in due time, he receives a patent. The contract of purchase is complete when the certificate of entry is executed and delivered, and thereafter the land ceases to be a part of the public domain.

In *Guaranty Savings Bank* v. *Bladow*, 176 U. S. 448, the validity of a certificate of final entry under the homestead laws was under consideration. No reference is made in the opinion to a receiver's receipt, the certificate of final entry being treated as

the basis upon which patent issues. "The certificate," says the court, "was prima facie evidence of the right of the entryman to a patent, but the power rested with the Land Department, upon proper notice, to set it aside and cancel the entry, and thus take away from him that prima facie evidence. * * * It does not transfer the title to the land from the United States to the entryman, and it simply furnishes prima facie evidence of an equitable claim upon the Government for a patent. * * * This is the legal effect of such certificates."

TWO YEARS BEFORE THE PASSAGE OF THE ACT OF MARCH 3, 1891, CONGRESS USED THE WORDS "RECEIVER'S RECEIPT" TO CONVEY THE IDEA THAT IT IS A RECEIPT ISSUED AFTER THE FINAL PROOFS HAVE BEEN EXAMINED AND APPROVED, AND AS REPRESENTING THE LAST ACT TO BE DONE BEFORE SENDING THE PAPERS TO WASHINGTON FOR PATENT.

In § 6 of the act of March 2, 1889, 25 Stat. 854, Congress makes use of the words "receiver's final receipt" in dealing with the homestead laws. From the language used it is plain that the words are employed to express the last act done preparatory to sending the papers to the General Land Office at Washington. In other words, that the receipt is not issued until after the register and the receiver have passed upon the final proofs and found everything regular. Section 6 reads:

> That every person entitled, under the provisions of the homestead laws, to enter a

> homestead, who has heretofore complied with or who shall hereafter comply with the conditions of said laws, and who shall have made his final proof thereunder for a quantity of land less than one hundred and sixty acres and received the receiver's final receipt therefor, shall be entitled, etc.

It is to be noted that the receipt upon which Stockley relies as the receiver's receipt upon final entry, was a receipt issued *without either the register or the receiver passing upon the final proofs.*

THE SIMILARITY BETWEEN A RECEIVER'S RECEIPT AND A CERTIFICATE ON FINAL ENTRY IS STRIKINGLY SHOWN BY THE VERY SECTION UNDER CONSIDERATION.

This section deals with two similar but distinct matters. One provides, in effect, that patents shall be issued where lands are sold, subsequent to final entry, to bona fide purchasers prior to March 1, 1888; the other, that patents shall issue upon the expiration of two years from the issuance of a receiver's receipt upon final entry. Although dissimilar terms are employed, the underlying thought is the same. In one part of the section the language runs, "and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and *certificates* issued, and to which there are no adverse claims originating prior to final entry * * * shall * * * be confirmed and patented." In the other, "That after the lapse of two years from the date of the issuance

of the *receiver's receipt* upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or preemption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent," etc.

IT IS OF COURSE WELL SETTLED THAT WHEN THE FULL EQUITABLE TITLE PASSES, THE PUBLIC LANDS BECOME SUBJECT TO STATE TAXATION; BUT UNTIL THIS OCCURS, THE STATES ARE POWERLESS TO TAX. UNDER THE CIRCUMSTANCES DISCLOSED BY THIS RECORD, THE LANDS NEVER HAVE BEEN SUBJECT TO STATE TAXATION.

Witherspoon v. *Duncan*, 4 Wall. 210.
Wisconsin Central R. Co. v. *Price County*, 133 U. S. 496.
Bothwell v. *Bingham County*, 237 U. S. 642.

THE ORAL TESTIMONY INTRODUCED BY THE GOVERNMENT SHOWS THAT AT THE TIME THE ACT OF MARCH 3, 1891, WAS PASSED, A RECEIVER'S RECEIPT WAS NEVER ISSUED UNTIL THE FINAL PROOFS HAD BEEN EXAMINED AND APPROVED. ON JULY 1, 1908, A RADICAL CHANGE IN THIS PRACTICE TOOK PLACE.

The practice prevailing at the time the act of March 3, 1891, was passed was succinctly stated by Green, a law examiner in the General Land Office. On the hearing of the plea in bar he testified (p. 35):

> Q. What was the custom then which prevailed in connection with the issuance of receipts and certificates, in 1891?
>
> A. According to the instructions that were issued to registers and receivers, as soon as

final proof was submitted by the entryman, the local officers—the register and receiver, were to examine that proof, to pass upon the qualifications of the entryman, and to see that he was qualified to make his entry; and if he was qualified, and the proof was sufficient, to accept that proof as sufficient and to collect from him the fees and commissions, and immediately upon the collecting of fees and commissions, after the acceptance of the final proof, to issue to him a receipt upon final entry. The receiver did that—and simultaneously, the register issued a final certificate—both bearing same number. The receiver's receipt, upon final entry, and the register's final certificate bore the same number, and unless they did bear the same number and were issued on the same date, they were required to explain to the Commissioner of the General Land Office why they did not, because of the discrepancy.

Q. State whether or not, under the practice then prevailing, a final receipt was issued separately and independently of the certificate, or whether they were both issued at the same time?

A. They were both issued at the same time; although one was issued by the receiver—the receipt was issued by the receiver—and the final certificate by the register; and simultaneously, on the same date, and bearing the same number.

Q. State whether or not, under the practice prevailing at that time, the receipt for the money issued before the entry was approved.

A. No, sir; it did not. The entry had to be passed upon and approved and the proof had to be passed upon and accepted *before the receipt could be issued.*

On July 1, 1908, according to the testimony, the method of issuing receipts was changed. In speaking of the prevailing practice at the time Stockley submitted his final proof in January, 1909, the witness said:

Q. I will ask you to state then whether or not, according to the practice which prevailed in the land office at the time Stockley made his final proof, the issuance to him of a receipt on the form which I have shown you, constituted, within that practice, an approval of his final proofs?

A. It did not.

Q. According to the practice prevailing in the land office at the time Stockley made his final proof, what was necessary to be issued to him in order to constitute a proof of his entry and final proofs?

A. The passing on the final proof by the local officers and the acceptance of that final proof and the issuance of a final certificate thereupon.

Q. Was there any final certificate issued in the Stockley case?

A. There never was (p. 32).

Again, at page 36:

Q. Now, under the practice prevailing at the time of Stockley's final proof, was it necessary that the final certificate issue at the time the receipt was issued?

A. No, sir; it was not. The final certificate may never be issued.

Again, at page 29:

Q. State whether or not that receipt showed an approval of the entry or final proof of Thomas J. Stockley by the local land officers?

A. It did not; simply showed the payment to the receiver of that sum of money.

THE RULES UNDER WHICH THE RECEIPT IN QUESTION WAS ISSUED PLAINLY SHOW THAT IT IS NOT TO BE REGARDED AS A FINAL RECEIPT. RULE 28 READS:

> The issuance of a receipt by a receiver of public moneys does not mean that the application, entry, proof, etc., in connection with which it is issued, is allowed or approved, or will be allowed or approved. It merely means that he has received the money and that it is in his custody or control until it is applied or returned (135).

THE DIFFERENCE IN THE FORM OF A RECEIVER'S RECEIPT IN VOGUE AT THE TIME THE ACT OF MARCH 3, 1891, WAS PASSED, AND THE RECEIPT ISSUED TO STOCKLEY, EMPHASIZES THE RADICAL DIFFERENCE IN THE NATURE OF THE TWO.

At page 125 of the transcript will be found the kind of receiver's receipt on final entry that was in use at the time the act just mentioned was passed. It should be compared with the receipt issued to Stockley (57). The difference between the two is manifest. One is specifically designated "Final receiver's receipt"; the other merely "Receipt."

THE LAND DEPARTMENT HAS GIVEN THE ACT IN QUESTION AN ADMINISTRATIVE INTERPRETATION IN HARMONY WITH OUR CONTENTION.

29 L. D. 539. 44 L. D. 115. 46 L. D. 496. 47 L. D. 135.

IN VIEW OF ALL THIS WE ARE JUSTIFIED IN ASSERTING THAT THE RECEIVER'S RECEIPT ON FINAL ENTRY MEANS A RECEIPT ISSUED AFTER THE FINAL PROOFS HAVE BEEN EXAMINED BY THE REGISTER AND RECEIVER AND FOUND REGULAR IN ALL RESPECTS.

If since the adoption of the new system on July 1, 1908, a receipt is issued, as was done in this case, for fees paid before the final proof is examined by the register and receiver, the receipt obtains no validity as a "receiver's receipt upon the final entry" until the proofs have in fact been examined by them and found regular in all respects. This is forcibly shown by rule 31 (p. 135):

> If, after a receipt has issued, the application, entry, proof, etc., can be allowed or approved, no further receipt for the money paid in connection therewith will be issued; but notice[1] of such allowance or approval will be given the person to whom the receipt issued. Such notations as "Application not yet allowed" or "Certificate not yet issued" are not necessary on the receipts nor the abstracts.

[1] On August 7, 1908, this instruction was issued: "The 'notice' in the case of a final entry will be a duplicate of the register's certificate, which will be prepared and promptly delivered to entrymen at the same time the original is issued. The duplicate copy must be plainly marked across its face 'Duplicate'" (37 L. D. 60.)

THE GOVERNMENT IS NOT CALLED UPON TO UPHOLD, AS A MATTER OF LAW, THE INSTRUCTIONS OF THE COMMISSIONER OF THE GENERAL LAND OFFICE ISSUED ON DECEMBER 15, 1908.

Whether the Commissioner had the power to issue these instructions is a matter of no moment. The fact is, he did issue them, and as a result the register and the receiver were forbidden to pass upon the final proofs. The two-year period begins to run not from the date when the receiver's receipt on final entry *should* have been issued but from the date of its *actual* issuance. If the register and the receiver should of their own volition refuse to take any action until compelled by mandamus, obviously the two-year period would begin to run not from the time the receipt on final entry should have issued but from the time it is issued in obedience to the writ.

The contention that the action of the commissioner in reversing the register and the receiver is void because the Government failed to take a formal appeal from their decision is without merit in view of the repeated rulings of this court.

Knight v. *U. S. Land Ass'n*, 142 U. S. 161.
Orchard v. *Alexander*, 157 U. S. 372.
Hawley v. *Diller*, 178 U. S. 481.
Love v. *Flahive*, 205 U. S. 195.
Plested v. *Abbey*, 228 U. S. 42.
Kirk v. *Olson*, 245 U. S. 225.[1]

[1] In *Gage* v. *Gunther*, 136 Cal. 338, it was held, in line with the reasoning of these cases, that inasmuch as Congress has imposed a supervisory duty upon the Secretary of the Interior, he can not divest himself of this duty by rules of his own creation.

In addition to this, the rules of practice of the Land Department place the matter beyond dispute. Rule 86 provides:

> No rule here prescribed shall be construed to deprive the Secretary of the Interior of any direct or supervisory power conferred upon him by law. (44 L. D. 410.)

Rule 69 (44 L. D. 407) also distinctly recognizes the power to review without an appeal.

The contention that no evidence was adduced at the hearing before the local land officers to justify a finding that the tract in question is mineral land, is devoid of merit.

THE EVIDENCE ADDUCED IS IN MANY RESPECTS NOT UNLIKE THAT UNDER CONSIDERATION IN UNITED STATES *v.* SOUTHERN PACIFIC CO., 251 U. S. 1, WHERE THE GOVERNMENT WAS HELD ENTITLED TO A DECREE CANCELING PATENTS TO LAND ON THE GROUND THAT FRAUD WAS PERPETRATED IN ASSERTING THAT THE LANDS WERE AGRICULTURAL, WHEN IN FACT THEY WERE MINERAL LANDS, BEING CHIEFLY VALUABLE ON ACCOUNT OF THEIR OIL.

In that case, as in this, the contention was made that the presence of oil a considerable distance away afforded no basis for designating the land as mineral. "Opinion or surmise," so the argument ran, to quote from page 2 of the report just mentioned, "that oil might exist at an unknown depth, from four to ten miles from its nearest known occurrence is not convincing proof that the conditions in 1904 'were plainly such as to engender the belief that the land contained mineral deposits of such quality and in

such quantity as would render their extraction profitable and justify expenditures to that end.'"

Careful attention is invited to the evidence in that case as outlined in the opinion. The nearest producing wells were apparently three to four miles away. The court in its opinion says:

> In 1903 and 1904 there were many producing wells about 25 miles to the east and many within a much shorter distance to the west and south, some within three or four miles (p. 8).
>
> Between the outcrop and the Elk Hills upwards of two hundred wells had found the oil-bearing strata and were being profitably operated, several of the wells being on a direct line towards the lands in suit and within three or four miles of them (p. 12).

IN ORDER TO ESTABLISH THAT LANDS ARE VALUABLE FOR OIL, ACTUAL DRILLING OPERATIONS ARE UNNECESSARY. IT IS SUFFICIENT IF THE KNOWN CONDITIONS ARE SUCH AS REASONABLY TO ENGENDER THE BELIEF THAT THEY CONTAIN OIL OF SUCH QUANTITY AND QUALITY AS WOULD RENDER ITS EXTRACTION PROFITABLE AND JUSTIFY EXPENDITURES TO THAT END.

United States v. *Southern Pacific*, 251 U. S. 1.

THE TESTIMONY INTRODUCED AT THE HEARING TO DETERMINE THE CHARACTER OF THE LAND IS SUFFICIENT TO JUSTIFY A FINDING THAT IT IS MINERAL LAND.

Coming now to the testimony before the local land officers, Pyron, who said he had been with the Gulf Refining Company since November, 1909 (65), testified, it is true, that on January 5, 1909, his company had no information that would lead them to believe

the Stockley tract contained oil or gas (68); and further, that on January 5, 1909, and prior thereto, there were no indications of oil or gas on the land such as would put an ordinarily prudent person on notice that the land was more valuable for those purposes than for any other (75). But the witness was not there in 1909, as he himself testified (74), and did not become connected with the Gulf Refining Company until November, 1909 (65). He, however, said that the nearest oil well on January 5, 1909, was about three miles east (71); that the Trees Oil Company *completed* the drilling of a well about November 10, 1909, in section 27, T. 21 N., R. 16 W.; that this company *then* held under a lease a large block of territory surrounding the well, which was subsequently sold to the Standard Oil Company; that this company held between four and five thousand acres west of Jeems Bayou, in that township and range (73). While he said that this land *subsequently* proved to be very productive territory (73), it is nevertheless a significant fact that it was acquired *before* November, 1909. The acquisition of such a large acreage can be accounted for only upon the theory that the land was supposed to be valuable for oil. The witness also said the J. M. Guffy Petroleum Company had purchased, as early as 1905, the Potter tract, adjoining Stockley's land on the west. Although he said that he did not think it would be regarded as possible oil or gas land at that time, and that the price paid would indicate that it was not so considered, the fact nevertheless remains that the purchase of the Potter tract by an oil company was a

factor to be taken into consideration in determining the character of the Stockley land.

Webster testified that the nearest oil or gas well in January, 1909, was about three miles east. It is true that he testified there was nothing on the Stockley tract to indicate oil or gas on January 5, 1909 (78), but his testimony is entitled to little weight. While admitting, in referring to geological conditions, "there is something in that," his position is that a drill is the *only* test to determine the character of the land (79). He further testified that the Rives land immediately to the north was offered to the Gulf Refining Company in the early part of 1909 at $1.00 an acre, and was refused. It is true that the refusal by this company to purchase is a factor of some weight, but the offer of the owners to sell to an oil company is also a factor.

Bell, who was in the employ of the J. M. Guffy Petroleum Company and the Gulf Refining Company from 1904 up to a year before the hearing (80), testified that in 1905 he bought the Potter tract adjoining the Stockley land (81). In speaking of this purchase he said: "We acquired the Potter's point, because some parties at Jefferson had the land for sale and *I thought possibly they wanted to lease,* as they did not state so, and *I went up there with Mr. Webster* and when they told me it was for sale I told them I would come back to Shreveport, that we were not buying any land, but he asked me to go and look at it, which I did, and I asked what they would take, as a matter of courtesy, thinking he would put a price of two or three dollars an acre

and I would not take it, but when he made the price I informed the Beaumont office that there was enough timber to pay for it, so we bought it" (84–5). On cross-examination he stated:

> Q. You bought the Potter tract as an oil proposition?
>
> A. No, sir; I simply bought it because there was timber enough on it to pay for it, and we would lose nothing on it by reason of minerals or nonminerals.
>
> Q. Your company was not in the timber business?
>
> A. No, sir; while in a way the company has one or two little plants in the country where they make barrels for oil, and in that way they are in the timber business (86).

This testimony is enough to convince anyone that the Potter tract was purchased because of its oil possibilities.

Before Stockley executed the lease to the Gulf Refining Company he attempted to lease to others. Guy testified that Stockley approached him in the early part of 1910, but that he could not handle the property and did not want it. When asked, "Did you at that time consider this land had mineral possibilities?" he answered, "Yes, sir" (99). When asked what were the nearest producing wells in January, 1909, he answered: "Well, I think about that time the nearest producing wells were right near Oil City, which would be three or four miles away." When asked if the developments spoken of would indicate to a practical oil man that this oil-bearing stratum would underlie Stockley's tract, he replied: "No, sir; *no more than a great deal of condemned ter-*

ritory that lay in between Oil City and the Stockley tract, that has since worked out pretty good," etc. (99).

In addition to the oral testimony there was introduced in evidence Bulletin No. 429, issued by the Geological Survey, covering oil and gas in Louisiana, published in 1910. At pages 139–149 will be found a complete list of all of the oil and gas wells in the Caddo field. It will be observed that wells came into existence at different places in 1905, 1906, 1907, 1908, and 1909. Many were drilled on the south half of section 1, T. 20 N., R. 16 W. The Caddo Gas & Oil Company, for example, put in one on the SW. ¼ of the SW. ¼ of that section, and, to quote from this bulletin, "Derrick up April 19, 1908; drilling July 20 to December 20, 1908; a 2,500-barrel well from the 1,580-foot stratum; gravity 30° Baumé. The best well in the field" (p. 140). Wells were also drilled in the adjoining township to the north (T. 21 N., R. 16 W.). The bulletin, for example, reports that the Rogers No. 1 well was begun in section 24. "At 2,000 feet gas began to escape through cracks in the ground, and finally derrick and all fell in. Estimated capacity 40,000,000 cubic feet of gas in August, 1908" (p. 148). The Rogers No. 2 was drilled in the same section. "Drilling July to September 6, 1908; a big gasser (40,000,000 cubic feet) at 1,035 feet" (p. 148).

In speaking of the J. C. Trees Oil Company No. 1 in section 27, on the Stiles tract, the bulletin says:

> Completed December 6, 1908; yield 50 barrels of oil, with a large amount of gas, at 1,060

feet, January 20, 1909. The hole was deepened, and by pumping with a standard rig 300 barrels of oil and 300 barrels of water were produced daily. In February, 1909, the daily capacity was stated to be 125 barrels. This well is the farthest west in the field.

At page 110 the bulletin says:

> For general purposes the Caddo field may perhaps be defined as a more or less quadrangular area in Caddo Parish, La., extending from Mooringsport on the south to Vivian on the north, and from the Louisiana-Texas state line on the west to Dixie on the east. It is located in the north corner of the Sabine uplift. The areas of greatest present development are shown on the index map and on Figures 12 to 15. However, even as far south as Shreveport gas has been found in considerable quantities at depths of less than 1,000 feet, and there are reasons for hoping that in various places throughout this great structural unit gas and oil may have been collected in paying quantities. Between such fields of future development there are doubtless extensive barren areas, and the localities that are productive will doubtless receive special names. In the Caddo field, as above defined, there are large areas that are barren of oil or gas.

The geological conditions are described in the bulletin at pages 119–129. At page 127 the bulletin says: "Four fairly well-defined oil and gas bearing zones are believed to be recognizable in the Caddo oil field. Of these at least two are found in practically every part of the field, although all vary more

or less in thickness, composition, and yield from well to well. These zones are," etc.

At page 130 the statement appears:

> Small quantities of heavy oil are found in the Nacotoch sand west of James Bayou, in sections 27 and 22. Three wells furnish about 85 barrels daily; the Rogers wells, at Lewis, 30 barrels; the Vivian Oil Company's three wells in section 36, near Vivian, 150 barrels.

When this bulletin, setting forth the geological conditions, is carefully examined, it at once becomes apparent that the local land officers had before them both oral and documentary testimony sufficient to justify a finding that the lands were mineral at the time Stockley made his final application.

Independently of the nature of the testimony before the local land officers, the finding of the Land Department as to the character of the land is conclusive and unassailable.

Steel v. *Smelting Co.*, 106 U. S. 447.
Barden v. *Northern Pacific R. R. Co.*, 154 U. S. 288.
Burke v. *Southern Pacific R. R. Co.*, 234 U. S. 669.
Cameron v. *United States*, 252 U. S. 450.[1]

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SEPTEMBER, 1922.

[1] The decisions of subordinate Federal courts as well as State courts are explicit upon this point: *Duffield* v. *San Francisco Chemical Co.*, 198 Fed. 942, 944; *Le Fevre* v. *Amonson*, 11 Idaho, 45; *Wright* v. *Town of Hartville*, 13 Wyo. 497; *Nevada Exploration & Min. Co.* v. *Spriggs*, 41 Utah, 171; *Lane* v. *Cameron*, 45 App. D. C. 404; *Earl* v. *Morrison*, 39 Nev. 120.

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